

Serial No.: 10/517,875  
Amendment A dated December 11, 2008  
Response to Office Action dated September 11, 2008

### REMARKS

Reconsideration of this application is requested in view of the foregoing amendments to the claims and the following remarks.

The status of the claims is as follows:

- Claims 26-51 have been rejected;
- Claims 26-28, 31, and 50 are now pending;
- Claims 26-28, and 31 have been amended, and
- Claims 29, 30, 32-49, and 51 have been canceled.

The examiner will notice that claim 26 has been amended to more specifically set out the invention. Each limitation added to claim 26 is well based in the specification and claims as filed. In particular, the lithium metal is mentioned in paragraph 17 of the published application, the polyethylene oxide (PEO) is noted in paragraph 14 and the poly(vinylidene fluoride)-co-(hexafluoropropylene) (PVDF-HFP) is noted in paragraph 13. No new matter has been added by the foregoing amendments.

The examiner has rejected claims 26-30, 32, 37, and 47-49 under 35 U.S.C. §102(a) as anticipated by WO 02/61872, hereafter "WO '872." This rejection as it applies to the currently pending claims is traversed.

The WO '872 document does not disclose a battery that includes PVDF-HFP as a separator film nor are any of the gelled electrolyte layers PEO as now set out in claim 26, the sole independent claim. For at least these reasons, the currently pending claims are not anticipated by WO '872 and this rejection should be withdrawn.

The examiner has also rejected claims 31 and 33 under 35 U.S.C. §103(a) as unpatentable over WO '872 in view of US 6,355,380, hereafter "the '380 patent." This rejection is traversed as it applies to the amended claims.

WO '872 does not disclose or suggest the use of PEO in combination with a lithium anode and a carbon cathode as set out in claim 31 that is dependent on claim 26. The battery of claim 26 is not suggested or made obvious to one of ordinary skill because there is no disclosure or suggestion to use PEO nor is there any disclosure of the advantages of using PEO in a lithium battery in WO '872. These

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advantages are set out in the instant specification including recovery of more than 80% of initial capacity after 350 cycles, see Example 2. In addition the PEO is more compatible with the lithium metal anode and the PEO is easier to manufacture than the prior gelled layer of multiple materials. Claim 26 upon which claim 31 depends is not obvious in view of either WO '872 alone or in combination with the '380 patent because neither of these documents alone or in combination disclose or suggest to one of ordinary skill a battery as now claimed. For at least these reasons, the rejection claim 31 is unwarranted and should be withdrawn.

The examiner has rejected claims 50 and 51 as unpatentable under 35 U.S.C. § 103(a) over WO '872 in view of US 2001/49054. Because WO '872 does not disclose or suggest the battery as claimed in claim 26, the addition of US 2001/49054 does not remove the defects of the disclosure of WO '872 upon which claim 590 depends. Therefore, this rejection is no longer warranted and should be withdrawn.

The other rejections made by the examiner are now moot because these claims have been canceled.

Reconsideration and allowance of the foregoing claims are respectfully requested. The examiner is welcome to call the undersigned attorney to discuss the pending claims for the purpose of expediting this prosecution.

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Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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